

Exhibit 45

United States of America ex rel. Ven-a-Care of the Florida Keys, Inc v. Abbott Laboratories, Inc.; Dey, Inc., et al.; Boehringer Ingelheim Corp., et al.;
Civil Action No. 01-12257-PBS

Exhibit to the September 22, 2009, Declaration of George B. Henderson, II
In Support of Plaintiff's Response to Defendants' Combined Local Rule 56.1
Statement of Additional Material Facts Pertinent to the United States' Motions
for Partial Summary Judgment Against Defendants

Mccann, Susan - November 7, 2007 09:00:00 a.m.

392:1

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4 IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS STATE OF MISSOURI

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6 STATE OF MISSOURI, EX REL.) JEREMIAH W. (JAY) NIXON,)

7 ATTORNEY GENERAL,))

8 PLAINTIFFS,)) CASE NO.

9 V.) 054-1216)

10 DEY INC, DEY LP, MERCK KGAA,) DIVISION NO. 31 EMD INC, WARRICK)

11 PHARMACEUTICALS CORPORATION,) SCHERING-PLOUGH CORPORATION,)

12 AND SCHERING CORPORATION,))

13 DEFENDANTS.)

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18 VIDEO DEPOSITION OF MS. SUSAN MCCANN

19 VOLUME II

20 Taken on behalf of the Defendants Warrick, Schering,

21 and Schering-Plough

22 November 7, 2007

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Mccann, Susan - November 7, 2007 09:00:00 a.m.

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606:1 Q. Counsel for Warrick asked you some
2 questions about the balancing the difference in the
3 dispensing fee and the -- I don't want to
4 mischaracterize this -- but the ingredient costs.

5 And you -- I believe you testified that you
6 thought that the dispensing fee was lower than it
7 should have been for the pharmacist. Could you tell
8 me what you think the dispensing fee should have
9 been?

10 A. At the time --

11 MR. McDONALD: Object -- I'm sorry. Object
12 to the form.

13 A. At the time I felt that it should at
14 least be the cost to dispense. We had established
15 that it cost, with no profit, a pharmacist to dispense
16 a prescription to be this amount.

17 MS. ADAMS:

18 Q. And do you recall what that cost was?

19 A. I think it was 5.24.

20 Q. Okay.

21 A. Or 5.14.

22 Q. So when you say the dispensing fee at
23 4.09 was lower than it should have been, you think it
24 should have been 5.24?

25 MR. McDONALD: Object to the form.

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607:1 MS. ADAMS:

2 Q. Is that correct?

3 MR. McDONALD: Object to the form.

4 A. I believed at the time that the fee
5 should reflect the cost to dispense. And I believe --
6 it was what was in the number that was in the survey.
7 I don't recall the precise number.

8 MS. ADAMS:

9 Q. Okay. So you believe that the
10 ingredient fee should have been balanced by the
11 difference, the \$1.23 difference in the dispensing
12 fee, is that correct?

13 A. My position always was that we should
14 pay accurately for both the ingredient cost and the
15 fee. That the ingredient cost should be what is being
16 paid for the drug and that the fee should be
17 appropriate for the dispensing.

18 MS. ADAMS:

19 Q. Okay. Thank you. And one more question
20 about the dispensing fee. Is the dispensing fee set
21 by the legislature?

22 A. I believe so. I think it's in the
23 appropriation.

24 Q. Okay. Do you know if it's any of the
25 rules and regulations?